

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 155 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 Yes

2 to 5 No

COMMISSIONER OF INCOME TAX

Versus

PREMIER DYE CASTING ENGG. CO. LTD.

Appearance:

MR BB NAIK for MR MANISH R BHATT for Petitioner
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.R.DAVE

Date of decision: 03/02/99

ORAL JUDGEMENT (per J.N. Bhatt, J.)

By order dated 4.8.1982, the Income Tax Appellate Tribunal, Ahmedabad Bench 'A', has referred the following two questions for our answers:-

"1. Whether, on the facts and in the circumstances of the case, having upheld the validity of the rectification proceedings u/s 154 of the I.T. Act, 1961, the Appellate Tribunal was justified in law in holding that the mistake actually occurred in the assessment order for the A.Y. 1969-70 and since that mistake remained on record, the same could not be rectified by the ITO during the A.Y. in question?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in not sustaining the rectification orders u/s 154 of the Act withdrawing the relief when the unabsorbed depreciation of Rs. 44,696/- for the A.Y. 1969-70 had been erroneously carried forward for the assessment year in question?"

2. The Tribunal, while making a reference, has not elucidated facts and the statement of case, in view of the reference made for our opinion, having identical questions and facts, set out in R.A. No. 656/Ahd/80 arising out of I.T.A. No. 307/Ahd/79, which was the subject-matter of reference in I.T.R. No. 155/83, which came to be decided by this Court on 29.1.1997, whereby questions raised were answered in negative, that is to say that, in favour of the revenue and against the assessee. In view of the decision in the said reference having identical questions, the facts leading to the rise of this reference are not required to be reiterated.

3. In short, the questions referred to us in this reference are covered by our decision in I.T.R. No. 155/83. The reasons assigned by us in the earlier reference, obviously, shall equally apply to the questions posed before us, in this reference.

4. In the earlier decision in I.T.R. No. 155/83, the relevant assessment order was of 1971-72 and whereas in the reference on hand, the assessment orders are of Assessment Years 1974-75, 1975-76 and 1976-77, arising out of three I.T.A. Nos. 551 to 553/Ahd/81, which have been compositely referred by the Tribunal.

5. In the light of the common facts and

circumstances and identical questions, the ratio propounded in the earlier reference is squarely attracted and this reference is squarely covered.

6. In the result, both the questions in this reference are also answered in negative, that is to say, in favour of the revenue and against the assessee. No order as to costs.

(hn)